BEST COPY
AVAILABLE

MONTANA LEGISLATIVE HISTORY

Chapter 59 19 95

Bill H 26 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 03	✓ C	Hearing Date(s)	Feb 03	✓ C
	Jan 12	✓ C			C
		C			C
		C			C
Date Out	Jan 12	✓ C		Feb 03	✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

2/04	COMMITTEE REPORT—BILL CONCURRED		
2/06	2ND READING CONCURRED	46	0
2/07	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
2/08	SIGNED BY SPEAKER		
2/09	SIGNED BY PRESIDENT		
2/10	TRANSMITTED TO GOVERNOR		
2/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 58		
	EFFECTIVE DATE: 02/13/95		

HB 26 INTRODUCED BY WYATT

REVISE THE MONTANA MEDICAL LEGAL PANEL ACT

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

12/16	INTRODUCED		
1/02	FIRST READING		
1/02	REFERRED TO JUDICIARY		
1/03	HEARING		
1/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/14	2ND READING PASSED	83	13
1/16	3RD READING PASSED	85	12
	TRANSMITTED TO SENATE		
1/17	FIRST READING		
1/17	REFERRED TO JUDICIARY		
2/03	HEARING		
2/03	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	42	3
2/06	3RD READING CONCURRED	41	5
	RETURNED TO HOUSE		
2/07	SIGNED BY SPEAKER		
2/08	SIGNED BY PRESIDENT		
2/08	TRANSMITTED TO GOVERNOR		
2/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 59		
	EFFECTIVE DATE: 10/01/95		

HB 27 INTRODUCED BY J. JOHNSON

REMOVE PROVISION MAKING CERTAIN PROCEEDINGS REGARDING THE DISPOSAL OF FORECLOSED AGRICULTURAL LAND TEMPORARY

12/16	INTRODUCED
1/02	FIRST READING
1/02	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/03	HEARING
1/10	TABLED IN COMMITTEE
2/23	MISSED TRANSMITTAL DEADLINE
	DIED IN COMMITTEE

HB 28 INTRODUCED BY SCHWINDEN

ALLOW STATE LOTTERY COMMISSION TO PROVIDE FOR PAYMENT OF A PRIZE BY A TICKET OR CHANCE SALES AGENT WHO DID NOT SELL THE TICKET OR CHANCE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

12/16	INTRODUCED
1/02	FIRST READING
1/02	REFERRED TO BUSINESS & LABOR

HOUSE BILL NO. 26

INTRODUCED BY WYATT

BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MEDICAL LEGAL PANEL ACT; REQUIRING THAT, UPON REQUEST, THE PANEL ARTICULATE THE REASONING AND BASIS FOR A DECISION; REQUIRING MANDATORY, NONBINDING MEDIATION FOR AN AFFIRMATIVE PANEL DECISION; AND AMENDING SECTIONS 27-6-604, 27-6-606, AND 27-6-704, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 27-6-604, MCA, is amended to read:

"27-6-604. Form and content of decision. The decision ~~shall~~ must in every case be signed for the panel by the chairman ~~and shall~~, must contain only the conclusions reached by a majority of its members, and ~~shall~~ must list the number of members, if any, dissenting ~~therefrom~~ from the opinion. ~~The~~ Upon request of any party, the majority ~~may~~ shall briefly explain the reasoning and ~~the~~ basis for ~~their~~ the decision~~,~~ and the dissenters ~~may likewise~~ shall explain the ~~reason~~ reasoning and basis for disagreement."

Section 2. Section 27-6-606, MCA, is amended to read:

"27-6-606. Decision not binding -- settlement agreements -- nonbinding mediation. (1) The panel's decision is without administrative or judicial authority and is not binding upon any party.

(2) The panel may recommend an award, approve settlement agreements, and discuss the ~~same~~ settlement agreements, all in a manner ~~not inconsistent~~ consistent with this part~~, and all such~~. All approved settlement agreements are binding on the parties.

(3) If the panel decides both questions required by 27-6-602 in the affirmative, the court in which the complaint is filed shall require the parties to participate in court-supervised, nonbinding mediation prior to proceeding."

Section 3. Section 27-6-704, MCA, is amended to read:

"27-6-704. Panel proceedings and decision privileged from disclosure in court actions. (1) ~~No~~ A

panel member may not be called to testify in ~~any~~ a proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(2) The decision and the reasoning and basis for the decision of the ~~medical review~~ panel ~~is~~ are not admissible as evidence in ~~any~~ an action subsequently brought in ~~any~~ a court of law."

-END-

Closing by Sponsor:

REP. SIMON said that sometimes we look at these things as simple fires, but a simple dumpster fire in downtown Billings turned into a million dollar loss of a furniture store. The crime of arson is serious and this bill is proposed to allow the change in the statute where probably many assumed it already was; i.e., when someone else's property is burned, that is the crime of arson or when personal property is burned for the purposes of gaining financially, that would be also the crime of arson.

CHAIRMAN CLARK closed the hearing on HB 46

HEARING ON HB 26

Opening Statement by Sponsor:

REP. DIANA E. WYATT, HD 43, Great Falls, said this bill came out of a joint study commission of the House and the Senate during the interim to discover and investigate insurance and medical malpractice claims and what is happening in Montana in reference to them. This was a unanimous proposal from that committee in terms of insurance issues. The act revises the Montana Medical-Legal Panel requiring that, upon request, the panel articulate reasoning and basis for their decision requiring mandatory non-binding mediation for an affirmative panel decision.

Proponents' Testimony:

Mike Craig, Planning and Research Director, Health Care Authority, stated that the enabling act, SB 285, that created the Health Care Authority had a similar directive to the Senate Joint Resolution that created the sub-committee to embark on this study. This is felt to be noncontroversial in the area of agreement and the sub-committee was commended for its hard work and their investigation into this.

Russell Hill, Montana Trial Lawyers Association, called attention to the written testimony which is attached. He stated that the bill represents a unique consensus as the Montana Medical-Legal Panel and the Montana Medical Association both support this bill. **EXHIBIT 1**

Brian Zins, Director of the Montana Medical-Legal Panel, stated that the panel does support this as good legislation and will help move the claims before the panel along much better.

Jerry Loendorf, Montana Medical Association (MMA), wanted to say that the MMA supports the bill. The function of the Medical-Legal Panel, when it was established in 1977, was to attempt to eliminate frivolous claims quickly and to dispose quickly of claims that were meritorious. It does this by gathering all the information immediately, particularly all the medical records, and to make those available to the parties and the experts who

meet with the parties in an informal hearing process to make a decision. They then give the parties their opinion as to whether they believe there is substantial evidence of negligence and whether that negligence could be construed to cause the damage complained of. The panel has traditionally given a decision in answer to these two questions; although by law it is currently allowed to give the reasons for the decisions, this bill requires the panel to give the reasons for decision to the participants. It should be helpful to know the decision as well as to also know the reason for the decision which hopefully will promote the settlement process. The second part of the bill, which requires mediation in the event a case is filed in court after a panel ruling, is favorable to the claimant. It doesn't require mediation where the panel has made a decision favorable to the defendant. In these cases, MMA thinks it reasonable to require mediation while acknowledging that the court probably has inherent authority to do that now.

Opponents' Testimony:

Mona Jamison, The Doctors' Company, stated that though they were not ardent opponents of the bill, they have a point to raise concerning section 2. It is their understanding that the courts already have inherent jurisdiction to require mediation and they wonder why it is necessary to impose this as a duty in the statutes. She noted that in Flathead County and also, she believes, in Gallatin County, mediation is already a mandatory practice. If it is already an inherent judicial discretion, they question the need for this bill.

Informational Testimony:

None.

Questions From Committee Members and Responses:

REP. DUANE GRIMES asked **Mr. Loendorf** to describe mediation as a practice and what this bill will mandate, who will be chosen to mediate and how that will that be supervised.

Mr. Loendorf said that this is not spelled out in the statute, but is left to the discretion of the district judge. How mediation takes place now generally, and there is no requirement that it take place in this manner, is that a mediator is agreed upon by the parties. The parties then meet with the mediator; usually the mediator requires a written statement from each party first so that he can study it prior to the meeting. The parties then meet with the mediator and the mediator encourages them to make a decision, usually by discussion with the parties, first jointly, and then with them individually regarding what the mediator sees as the merits of their case (perhaps including how the mediator views the result). What the mediator does varies by the individuals.

REP. GRIMES asked how much time this would add to the whole process and would it require legal counsel in the mediation.

Mr. Loendorf replied that once the case is filed in court, legal counsel would be necessary. He stated that probably a month would be added to the process because the discovery and all the proceedings would be held up by this bill pending mediation.

REP. DANIEL MC GEE pursued the logic of requiring mediation as opposed to leaving it optional.

Randy Dix, Trial Lawyers Association, answered that what happens now is that the mediation is not being applied uniformly but rather depending upon which court has jurisdiction. Some county courts are requiring mediation before a case can be tried; but in Lewis & Clark County where he practices, this is not the case. The reason for imposing the affirmative obligation upon the parties to sit down in mediation is that there is no mechanism now that really does it. With respect to **REP. GRIMES'** question regarding the additional time, he gave examples which indicated that it does not add much time--a few hours to a full day at the most. He cited that the mediation does short cut the process in the later phase of litigation.

{Tape: 1; Side: B; Approx. Counter: 5.5}

Closing by Sponsor:

REP. WYATT closed by stating that if things go to mediation, and thereby eliminate further litigation of other cases, time is also saved in the court and for the physician and for the person who may or may not be damaged in that incident. She said that in evaluating the cost savings one must look not just at that one trial through the process of the hearing with the medical malpractice panel, plus the mediation, plus the court costs and the time involved in that. But one must look as well at the ones that may be deterred and/or stopped at this level as important in terms of saving time and getting to justice. She cited a case where a physician wanted to settle much earlier but was not given that option and the injury to both the patient and the physician through the process added to the original injury. She stated that in that case and in others like it, the current process is not in the best interests of the parties involved. She felt that this bill is a reasonable approach to the law.

CHAIRMAN CLARK then closed the hearing on HB 26.

HEARING ON HB 41

Opening Statement by Sponsor:

REP. LIZ SMITH, HD 56, DEER LODGE, opened the hearing on HB 41, which addresses the issue of treatment of the mentally ill. She represents the district where the Montana psychiatric hospital is

EXHIBIT 1
DATE 1/3/95
HB 26

Directors:
Wade Dahood
Director Emeritus
Ite D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Montana Trial Lawyers Association

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

Officers:
Gregory S. Munro
President
Michael E. Wheat
President-Elect
Gene R. Jarussi
Vice President
John M. Morrison
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

January 3, 1995

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: HB 26

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for House Bill 26, revising the Montana Medical Legal Panel Act.

Background. MTLA recommended these changes, among others, to the Joint Interim Subcommittee on Insurance Issues chaired by Sen. Del Gage. In addition, the Montana Medical-Legal Panel and the Montana Medical Association both testified before the subcommittee in support of these proposals. At its August 26, 1994, hearing on these proposals, the subcommittee voted 6-2 to recommend that they be enacted into law.

Montana Medical-Legal Panel. Montanans injured by medical negligence must submit their complaints to the Montana Medical-Legal Panel before resorting to court. The Panel evaluates complaints to determine (1) whether there is "substantial evidence" of medical negligence and (2) whether there is "reasonable medical probability" that any medical negligence injured the claimant.

Significantly, *the Panel does not say "YES" to a claimant, only "NO" or "MAYBE."* Consequently, even when Montana claimants successfully demonstrate the merits of their claim before the Panel, and even when Montana providers could avoid long, difficult, even counterproductive litigation, their liability insurance companies often have little or no incentive to negotiate a reasonable settlement of the claim.

House Bill 26. House Bill 26 reinforces the original intent of the Montana Medical-

Legal Panel Act by encouraging all parties to settle legitimate medical-negligence claimsf without litigation:

- Section 1 allows any party to a dispute before the panel to obtain a brief explanation for the panel's decision. Currently, the panel's findings often consist of nothing more than a vote count, giving little objective guidance to the parties and increasing the likelihood of litigation.

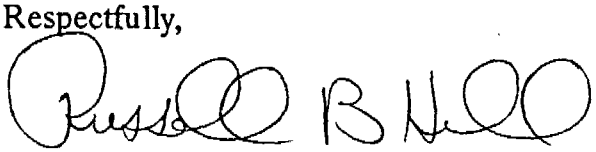
- Section 2 requires court-supervised, *non-binding* mediation whenever (1) the Panel finds substantial evidence of medical negligence and (2) the Panel finds reasonable medical probability that the claimant's injury resulted from that negligence. No party is bound by the recommendations of the mediator, but all parties must nevertheless negotiate in good faith.

- Section 3 merely extends the current guarantees of confidentiality for Panel deliberations and decisions to cover instances when the Panel explains its decision.

MTLA believes that the Montana Medical-Legal Panel and the Montana Medical Association continue to support the improvements contained in House Bill 26, and MTLA encourages this Committee to carefully consider their comments as well.

If I can provide additional information or assistance to the Committee, please allow me to do so. Thank you again for this opportunity to express MTLA's support for House Bill 26.

Respectfully,



Russell B. Hill
Executive Director

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 01-03-95

BILL NO. 26 SPONSOR(S) REP. DIANA WYATT

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
[illegible]	Mt. Med. Assn	✓	
~~Joel Cohen~~ ✓	~~Dept. of Justice~~		
Ethan Zins	MT Med Assn	✓	
Jacqueline Lenmark	Am. Insurance Assoc	✓	
Charles K. Brooks	Yellowstone County		
Mike Craig	Health Care Auth	✓	
Russell B Hill	MT Trial Lawyers Assn	✓	
Kathy McGowan	MSPOA, MCMHC		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

relative to the potential of additional burdens placed on law enforcement personnel would take up too much committee time, he would recommend tabling HB 82.

Motion/Vote: **REP. GRIMES MOVED TO TABLE HB 82.** The motion carried on roll call vote, 11-8. **EXHIBIT 7**

CHAIRMAN CLARK appointed a subcommittee to review all the mental health bills which have been referred to the House Judiciary Committee. The subcommittee will consist of **REP. SOFT**, as chairman, **REP. BERGMAN** and **REP. CAREY.**

EXECUTIVE ACTION ON HB 26

Motion: **REP. WYATT MOVED DO PASS HB 26.**

Discussion: **REP. WYATT** said this bill is a byproduct of the Subcommittee on Insurance's year-long investigation. It is a consensus bill and is supported by the American Medical Association (AMA), supported by most of the insurance companies doing business in Montana and also supported by the trial lawyers. She cited a situation where a patient was unquestionably injured and the doctor was unquestionably at fault. Both parties wanted to settle. The insurance company did not want to settle which caused the case to go through the medical practice panel and to trial. The time factor hurt both parties, neither received justice and both had wanted to avoid publicity. Further, she gave examples of the projected cost savings through avoidance of court processes.

REP. GRIMES said that the courts already have the authority to go to mediation or arbitration. In trying to solve a small portion of cases through the passage of this bill, all courts would be forced into this mediation process. He did not agree that the time in settling these cases would be shortened by this process. He felt this would fall under the category of passing on more mandates to the local levels of government.

Motion: **REP. GRIMES MOVED TO AMEND HB 26 BY STRIKING SECTION 2.**

REP. WYATT opposed the amendment because the purpose of the binding arbitration is to defray the inevitable costs in the court of the county where they would be no matter what the process might be. She said that actually the committee's decision comes down to determining the amount of the county's expense.

REP. BOHARSKI suggested an alternate to the proposed amendment on line 26 after the word, "shall," insert "may at the request of the third party."

REP. GRIMES asked **REP. BOHARSKI** to read his proposed amended version of the amendment.

REP. BOHARSKI said that subsection (3) would read, "If the panel decides both questions required by 27-6-602, MCA, in the affirmative, the court in which the complaint is filed shall, upon the request of either party, require the parties to participate in court-supervised, nonbinding mediation prior to proceeding."

REP. GRIMES said that improves the proposed language of this bill. He asked if that isn't the way it is done now. He asked then how this would be compared to current law.

John MacMaster gave the opinion that currently the court may, but is not required to, require arbitration if one or both parties requests it. Under the bill, if it is amended as proposed by **REP. BOHARSKI**, the court would be mandated to require arbitration.

REP. GRIMES commented that the intention of his amendment is to prevent the mandate. In his mind, it is different from the proposed language change by **REP. BOHARSKI**. In follow-up to a comment by **REP. WYATT**, he wondered why the mediation is not binding if the intent is to save costs.

REP. WYATT said she probably would support binding arbitration though she is trying to be more general and less invasive in terms of the what the demands are on the parties involved. She would support **REP. BOHARSKI'S** amendment to **REP. GRIMES'S** amendment. Her point in mediation is for the physician and patient to have some control over their own lives in their willingness to settle rather than leaving control in the hands of attorneys and/or insurance companies who do not allow them to settle.

REP. BERGMAN asked if the idea is to keep these cases out of court.

REP. WYATT said that was correct.

REP. BERGMAN asked if it would really work since it is not binding. Further, she asked about any recourse for a party who was not satisfied with the result.

REP. WYATT said that recourse would be to continue on to court. This bill would address those cases where the parties want to settle out of court.

REP. MOLNAR asked how this change in the law would help reach settlement when the amount asked for by the injured party is above what can be taken out of pocket and the insurance company refuses to pay.

REP. WYATT said it brings to the table a range of numbers the insurance company and patient are willing to settle for. This

meeting would be the first time money is discussed. She asked for an attorney in the audience to address the question.

REP. GRIMES objected.

REP. KOTTEL responded that when there is a court-supervised mediation, the parties begin to see each other's side. Mediation puts real facts on the table which bring aspects of reality to each side's case. When insurance companies refuse to accept a settlement which has been agreed to in mediation by both sides, the case goes to trial. If the jury awards an amount over the amount of the company policy limits, the defendant can sue the insurance company for their failure to accept the settlement. Then the insurance company is in the position of having to pay the overage. This possibility induces most insurance companies to accept the settlement offer in the mediation process.

REP. AHNER asked if the parties would have more leverage if it were binding.

REP. KOTTEL said that would be another bill and is not what is before the committee today.

(Tape: 1; Side: B; Approx. Counter: 54.7)

REP. SOFT wants to know how many cases like the one **REP. WYATT** cited have occurred in the past few years.

REP. WYATT said she could not give the numbers. But the point, she felt, is that in those cases, the parties would have received the same fair treatment as those in cases where arbitration has taken place.

REP. BOHARSKI asked if the insurance company has the authority to override the decision of the insured party who wants to settle.

REP. GRIMES removed his objection to testimony from a member of the audience.

Jacqueline Lenmark, representing the American Insurance Association, responded that in the typical malpractice case when the insurance company retains defense counsel, the defense counsel is working for the client, (in this case, the doctor) so the insurance company is not the client. In a typical case, the client is informed who his counsel is, what his policy limits are and that if he fears there is an exposure greater than policy limits, he may retain additional counsel. It is possible that a client will not only have a lawyer compensated and retained by the insurance company but may retain his own lawyer as well. Typically, settlement is discussed somewhere along the way and if the client directs the insurance company to settle, the company is under an obligation to look at settlement and is at risk for a bad faith action if the company does not settle within policy limits. In terms of the proposed amendment, she thought it would

be accurate to say that insurance companies generally do not want to have the defense of a lawsuit directed by statute, but would rather have the freedom to come to that decision with the client they are representing. **REP. GRIMES'** amendment to the bill would help. **REP. BOHARSKI'S** amendment would also help that happen.

Russell Hill, Montana Trial Lawyers Association (MTLA), said that **Ms. Lenmark** accurately described the duties of an insurance company to its insured in the course of nonbinding mediation. He added that MTLA understood that this was a consensus bill and the best part of the bill is the articulation of the decision.

REP. WYATT said that a club that insurance companies have over a physician is that they can cancel coverage of malpractice insurance. This will influence the physician's decision and is an additional argument for nonbinding arbitration.

{Tape: 2; Side: A}

Motion/Vote: **REP. BOHARSKI MOVED FOR A SUBSTITUTE AMENDMENT FOLLOWING THE WORD, "SHALL" INSERT: "AT THE REQUEST OF ANY PARTY ....."** carried unanimously by a voice vote.

Motion: **REP. BOHARSKI MOVED DO PASS AS AMENDED.**

Motion/Vote: **REP. MOLNAR MOVED TO AMEND SECTION 1, 27-6-604, MCA, FOLLOWING THE LAST SENTENCE ON LINE 17 TO INSERT A NEW SENTENCE, "ALL PARTIES SHALL BE INFORMED OF THEIR RIGHT TO NONBINDING MEDIATION."** The motion carried with a unanimous voice vote.

Motion: **REP. GRIMES MOVED TO STRIKE AMENDED SECTION 2 IN ITS ENTIRETY.**

Discussion: **REP. ANDERSON** said that he would vote in favor of this amendment. He planned to vote against the bill, but with this amendment the effect would be to delay one month on average that would be added to the time it takes to go through one of these if you have mandatory mediation. He thinks that there may be a case of clear negligence in a particular case and the injured party should have the right to take this case to court rather than have a delay in the legal process which may be to the advantage of the doctor or the insurance company. You may have a case that will clearly end up in court anyway and I don't think you should have a mandatory mediation process in that situation.

REP. WYATT opposed the amendment. The delays that exist in the court now continue to exist. To bring this to mediation will take from two hours to two days and will cost from $600-$2,500 versus $30,000-$50,000. Delays that are built into the system have nothing to do with this bill. She felt the amendment would defeat the purpose of the bill.

Vote: Motion to amend by striking section 2 failed by roll call vote. **EXHIBIT 9**

Mr. MacMaster said that amendments are often proposed without a request from the proposer for a corresponding amendment in the title. He asked to amend the title accordingly when necessary without the proposer having to stipulate. The committee agreed to this stipulation.

Motion/Vote: **REP. WYATT MOVED DO PASS AS AMENDED.** The motion carried with **REPS. GRIMES, SOFT AND ANDERSON** voting no.

{Tape: 2; Side: A; Approx. Counter: 12.9}

EXECUTIVE ACTION ON HB 108

Motion: **REP. MC GEE MOVED DO PASS.**

Discussion: **REP. BOHARSKI** asked who would pay for this.

REP. MC GEE said that it is his understanding that this is supported by the fines and there would be no fiscal impact.

REP. BOHARSKI discussed the potential problems with passing this bill with no fiscal note even if this is the case.

REP. CLARK read a response that satisfied the requirement for a fiscal note. **EXHIBIT 10**

REP. HURDLE said that the response given to the question about what will happen when someone cannot pay the bill was that the program itself would absorb the cost.

CHAIRMAN CLARK said that **REP. COBB** had informed him that there were 279 cases last year which would apply under this bill. **EXHIBIT 11**

Vote: The motion passed unanimously by voice vote.

REP. BOHARSKI objected to putting it on consent calendar.

REP. MC GEE MOVED TO ADJOURN.

EXHIBIT 9
DATE 1/12/95
HB 26

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 1/12/95 BILL NO. 26 NUMBER Grimes Amendment

MOTION: AMEND BY STRIKING SECTION 2

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		✓
Rep. Bill Boharski		✓
Rep. Bill Carey	~~✓~~	✓
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea		✓
Rep. Liz Smith		✓
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

HOUSE STANDING COMMITTEE REPORT

January 12, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 26** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 7.
Following: "REQUIRING"
Insert: ", AT THE REQUEST OF A PARTY,"

2. Page 1, line 17.
Following: "disagreement."
Insert: "Each party must be informed by the panel of the right to nonbinding mediation under 27-6-606."

3. Page 1, line 26.
Following: "shall"
Insert: ", at the request of a party,"

-END-

1/13

Committee Vote:
Yes 19, No 0.

voting **"NO"**.

Motion/Vote: **SENATOR RIC HOLDEN MOVED THE CHAIRMAN ON ORDER OF BUSINESS NO. 6 WILL REQUEST SB 132 BE REREFERRED TO THE COMMITTEE ON RULES. The motion CARRIED UNANIMOUSLY** on oral vote.

{Tape: 1; Side: B; Approx. Counter: 1.9}

HEARING ON HB 26

Opening Statement by Sponsor:

REPRESENTATIVE DIANA WYATT, House District 43, Great Falls, presented HB 26, at the request of the Joint Interim Subcommittee on Insurance Issues. Section 1 merely tries to allow any party to a dispute before the Montana Medical Legal Panel to obtain a brief explanation of the panel's decisions. Currently only the vote count is recorded. Section 2 requires court supervised nonbinding mediation when it is at the request of either of the parties involved. Section 3 extends the current guarantees of confidentiality for the deliberations. This was a consensus piece resulting from the interim study.

Proponents' Testimony:

Russell Hill, MTLA, stated they support the bill. He presented written testimony, **EXHIBIT 1.**

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

REPRESENTATIVE WYATT offered no further remarks in closing.

HEARING ON SJR 10

Opening Statement by Sponsor:

SENATOR ETHEL HARDING, Senate District 37, Polson, presented SJR 10. She has been searching for help for 20 years to do something to limit frivolous appeals to a reasonable length of time or get some relief in length of time taken on appeal turnaround. This usually takes about two years for every appeal. This Resolution does not do anything about frivolous appeals. It simply requests Congress to divide the Ninth Circuit Court of Appeals so that Montana and our neighboring states would not have to compete with

legislature to do their part. We need a lot more training, education, and awareness of the problem in our society. SB 278 will provide a big step in that direction.

EXECUTIVE ACTION ON HB 26

Motion/Vote: **SENATOR LINDA NELSON MOVED HB 26 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote. **SENATOR. REINY JABS** will carry the bill on the Senate floor.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2/3/95
HB 26

Directors:
Wade Dahood
Director Emeritus
Monte D. Beck
Elizabeth A. Best
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Michael E. Wheat

Montana Trial Lawyers ASSOCIATION

Officers:
Gregory S.
Presiden
Michael E.
Presiden
Gene R. Ja
Vice Pre
John M. M
Secretar
William A.
Governo
Paul M. W
Governo

Russell B. Hill, Executive Director
#1 N. Last Chance Gulch
Helena, Montana 59601
Tel: (406) 443-3124
Fax: (406) 443-7850

February 3, 1995

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59620

RE: HB 26

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for House Bill 26, revising the Montana Medical Legal Panel Act.

Background. MTLA recommended these changes, among others, to the Joint Interim Subcommittee on Insurance Issues chaired by Sen. Del Gage. In addition, the Montana Medical-Legal Panel and the Montana Medical Association both testified before the subcommittee in support of these proposals. At its August 26, 1994, hearing on these proposals, the subcommittee voted 6-2 to recommend that they be enacted into law.

In the House, the Montana Medical Association and Montana Medical-Legal Panel again joined MTLA in supporting these changes. The House Judiciary Committee amended the bill to provide that (1) nonbinding mediation is mandatory only when requested by one of the parties, and (2) the panel must inform each party of their rights to nonbinding mediation. MTLA believes that the amendments clarify the intent of the bill and help prevent an unintended consequence: nonbinding mediation which no party wants and which, therefore, would probably be futile.

The House Judiciary Committee voted 16-3 in favor of the amended bill. On second reading, the full House voted 83-13 in favor of the amended bill.

Montana Medical-Legal Panel. Montanans injured by medical negligence must submit their complaints to the Montana Medical-Legal Panel before resorting to court. The

Panel evaluates complaints to determine (1) whether there is "substantial evidence" of medical negligence and (2) whether there is "reasonable medical probability" that any medical negligence injured the claimant.

Significantly, *the Panel does not say "YES" to a claimant, only "NO" or "MAYBE."* Consequently, even when Montana claimants successfully demonstrate the merits of their claim before the Panel, and even when Montana providers could avoid long, difficult, even counterproductive litigation, their liability insurance companies often have little or no incentive to negotiate a reasonable settlement of the claim.

House Bill 26. House Bill 26 reinforces the original intent of the Montana Medical-Legal Panel Act by encouraging all parties to settle legitimate medical-negligence claimsf without litigation:

- Section 1 allows any party to a dispute before the panel to obtain a brief explanation for the panel's decision. Currently, the panel's findings often consist of nothing more than a vote count, giving little objective guidance to the parties and increasing the likelihood of litigation.

- Section 2 requires court-supervised, *non-binding* mediation when requested by any party after (1) the Panel finds substantial evidence of medical negligence and (2) the Panel finds reasonable medical probability that the claimant's injury resulted from that negligence. No party is bound by the recommendations of the mediator, but all parties must nevertheless negotiate in good faith.

- Section 3 merely extends the current guarantees of confidentiality for Panel deliberations and decisions to cover instances when the Panel explains its decision.

MTLA believes that the Montana Medical-Legal Panel and the Montana Medical Association continue to support the improvements contained in House Bill 26, and MTLA encourages this Committee to carefully consider their comments as well.

If I can provide additional information or assistance to the Committee, please allow me to do so. Thank you again for this opportunity to express MTLA's support for House Bill 26.

Respectfully,

Russell B. Hill
Executive Director

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 26 (third reading copy -- blue), respectfully report that HB 26 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SEN. JABS
Senator Carrying Bill

291241SC.SRI